

**Service of Process  
Transmittal**

11/18/2013

CT Log Number 523910376

**TO:** Gail Haas  
Metalor Electrotechnics  
Murray Corporate Park, 1003 Corporate Drive  
Export, PA 15632

**RE: Process Served in Delaware**

**FOR:** Metalor Electrotechnics (Puerto Rico) LLC (Domestic State: DE)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** To: Metalor Electrotechnics Puerto Rico LLC, Respondent  
*Name discrepancy noted.*

**DOCUMENT(S) SERVED:** Notice(s), Order, Attachment(s), Certificate of Service

**COURT/AGENCY:** United States Environmental Protection Agency, PR  
Case # RCRA0220137305

**NATURE OF ACTION:** Environmental Litigation - Property Damage - Proposed Administrative Order on  
Consent Requiring Monitoring, Testing, Analysis and Reporting

**ON WHOM PROCESS WAS SERVED:** The Corporation Trust Company, Wilmington, DE

**DATE AND HOUR OF SERVICE:** By Certified Mail on 11/18/2013 postmarked on 11/12/2013

**JURISDICTION SERVED :** Delaware

**APPEARANCE OR ANSWER DUE:** None Specified

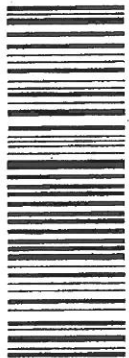
**ATTORNEY(S) / SENDER(S):** Judith A. Enck  
United States Environmental Protection Agency  
City View Plaza II  
Suite 7000  
#48 Rd  
165 Km 1.2  
Guaybano, PR 00968

**ACTION ITEMS:** SOP Papers with Transmittal, via Fed Ex 2 Day , 797197067306

**SIGNED:** The Corporation Trust Company  
**PER:** Melanie McGrath  
**ADDRESS:** 1209 Orange Street  
Wilmington, DE 19801  
**TELEPHONE:** 302-658-7581

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
CARIBBEAN ENVIRONMENTAL PROTECTION DIVISION  
CITY VIEW PLAZA II - SUITE 7000  
#48 RD. 165 KM 1.2  
GUAYNABO, PR 00968-8069

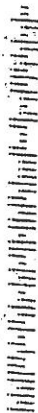
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE  
**CERTIFIED MAIL**



7011 2000 0000 8863 2604



Metalor Electrotechnics Puerto Rico LLC  
c/o Corporation Trust Center  
1209 Orange Street  
Wilmington-New Castle, Delaware 19802



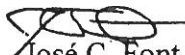
**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

**DATE:**

11/4/13

**SUBJECT:** Proposed RCRA Section 3013 Administrative Order on Consent,  
Metalor Electrotechnics Puerto Rico LLC, Respondent  
Docket No. RCRA-02-2013-7305

**FROM:**

  
José C. Font, Director  
Caribbean Environmental Protection Division

  
Eric Schaaf  
Regional Counsel

**TO:**

Judith A. Enck  
Regional Administrator

Attached for your review and signature is the RCRA Section 3013 Administrative Order on Consent for the Metalor manufacturing plant located at Mata de Plátano Ward, Luquillo, Puerto Rico ("the Facility"). The Respondent is Metalor Electrotechnics Puerto Rico LLC ("Metalor" or "Respondent").

The attached proposed Order includes a determination by the Regional Administrator that based on receipt of evidence and information, a substantial hazard to human health or the environment exists. An order pursuant to Section 3013 of RCRA, 42 U.S.C. § 6934, is used to evaluate the nature and extent of the problem through monitoring, analysis, and testing.

**Background**

The purpose of the proposed Order is to require Respondent to conduct monitoring, testing and analysis, to determine the scope of the releases of hazardous wastes or constituents of hazardous wastes, as defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), at the Facility.

Respondent will also be required to submit written proposals to ascertain the nature and extent of the hazards posed by the hazardous wastes and/or hazardous constituents that are present at or that may have been released from Respondent's Facility. Respondent is hereby ordered to implement such proposals once approved, or modified and approved, by EPA.

**Proposed Order**

Among its requirements, the Order requires Respondent to: determine the extent and sources of all releases of hazardous wastes or hazardous waste constituents at the Facility using quality data; evaluate and meet EPA's Environmental Indicators to determine whether RCRA Interim Measures or Corrective Action are necessary or appropriate at the Facility; conduct effective

public involvement; and communicate regularly with EPA and the Commonwealth of Puerto Rico, on the progress of actions taken pursuant to this Order. Respondent will satisfy these requirements through a combination of sampling activities, previous work, and documentation of valid historical data.

At the completion of site characterization activities, EPA will evaluate the need for Interim Measures or a Corrective Action Permit or Order. Eliminating human exposure to hazardous wastes and hazardous constituents and controlling migration of contaminated groundwater are short-term corrective action objectives. Interim Measure activities implemented to achieve these short-term objectives are based on reasonably expected human exposures under current land and groundwater use conditions.

The RCRA Corrective Action Program's overall mission is to protect human health and the environment. To achieve this goal, final remedies must be based on potential future land and groundwater uses and ecological receptors. Under certain circumstances, implementation of Interim Measures may achieve the final remedial goals. In that case, EPA will issue a public notice with the tentative determination and solicit comment prior to making a final Agency determination regarding final corrective action remedies at the Facility.

The proposed Order also contains other provisions that are customary in Region 2 Orders, which, among others, preserve EPA's enforcement rights.

#### **Recommended Action**

We recommend that you sign the attached Order. The Order will be effective by its terms ten (10) days after signature by the EPA Regional Administrator. If approved, please sign all three copies where indicated and return them for processing to Carolina Jordán-García, ORC-CT, extension 5834.

Attachment



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

<b>IN THE MATTER OF:</b>  <b>Metalor Electrotechnics Puerto Rico LLC,</b> Respondent  EPA I.D. No: PRD090426180	<b>ADMINISTRATIVE ORDER ON CONSENT</b>  Docket Number: RCRA-02-2013-7305  <b>Proceeding under Section 3013(a) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6934(a)</b>
--------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

**RCRA SECTION 3013(a) ADMINISTRATIVE ORDER ON  
CONSENT REQUIRING MONITORING,  
TESTING, ANALYSIS AND REPORTING**

**I. JURISDICTION**

1. This Administrative Order on Consent (the "Order") is issued pursuant to the authority vested in the Administrator of the Environmental Protection Agency ("EPA" or the "Agency") by Section 3013(a) of the Resource Conservation and Recovery Act ("RCRA" or the "Act"), as amended, 42 U.S.C. § 6934(a). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 2, who hereby issues this Order.
2. This Order is issued to Metalor Electrotechnics Puerto Rico LLC ("Metalor" or "Respondent"), a company organized under the laws of the Commonwealth of Puerto Rico. Respondent is the owner and/or operator of the Metalor plant (the "Facility"), located at Mata de Plátano Ward, Luquillo, Puerto Rico.
3. The Regional Administrator has been presented with information from which a determination has been made that the presence or release of a hazardous waste, as defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), at or from the Facility may present a substantial hazard to human health or the environment, and hereby orders Respondent to conduct monitoring, testing, analysis, and reporting to ascertain the nature and extent of such hazard.
4. This Order is based upon the administrative record compiled by EPA. The record is available for review by Respondent and the public at EPA's Regional Office at City View Plaza II, Suite 7000, #48 Rd. 165, km. 1.2, Guaynabo, Puerto Rico, 00968-8069.

**II. PARTIES BOUND**

5. The provisions of this Order shall apply to and be binding upon Respondent and its officers, employees, agents, successors and assigns.

6. No change in ownership, corporate, or partnership status relating to the Facility will in any way alter the status or responsibility of Respondent under this Order. Any conveyance by Respondent of title, easement, or other interest in the Facility described herein, or a portion of such interest, shall not affect Respondent's obligations under this Order. Respondent shall be responsible and liable for any failure to carry out all activities required of Respondent by this Order, irrespective of its use of employees, agents, contractors, or consultants to perform any such tasks.

7. Respondent shall provide a copy of this Order to any and all business organizations, contractors, or subcontractors, retained by Metalor to perform the Work required by this Order. Respondent shall provide a copy of this Order to all contractors, subcontractors, laboratories, and consultants retained to conduct or monitor any portion of the Work performed pursuant to this Order within seven (7) calendar days of the effective date of this Order, or on the date of such retention, and Respondent shall condition all such contracts on compliance with the terms of this Order.

8. Any documents transferring ownership and/or operations of the Facility from Respondent to a successor-in-interest shall include written notice of this Order. In addition, Respondent shall, no less than thirty (30) calendar days prior to transfer of ownership or operation of the Facility, provide written notice of this Order to its successor-in-interest, and written notice of said transfer of ownership and/or operation to EPA.

### **III. FINDINGS OF FACT**

#### **Ownership and Operational History**

9. The Facility is located at State Road 992, km.0.2, Mata de Plátano Ward, Luquillo, Puerto Rico, and has an area of 7,190 square meters. The main building has an area of 2,555 square meters.

10. The vicinity of the Facility can be described as follows: to the north: an industrial lot currently occupied by a cable television company. Further north, approximately 150 meters, is an arterial road PR-3; to the east: public road PR-992, followed by an industrial vacant lot, and arterial road PR-3 about 150 m to the east; beyond that is a residential area. A municipal wastewater treatment plant is located approximately 280 meters southeast; to the south: Oxtail street followed by a vacant industrial lot; and to the west: industrial vacant lots followed by the nearest residential area at approximately 200 meters.

11. From 1958 to 1960, the Puerto Rico Development Company, a state government agency, built what is referred herein as the Facility, as part of the Luquillo Industrial Park. GTE Sylvania bought and occupied the Facility. GTE Sylvania dedicated the Facility to the manufacturing of electrical components from 1960 until 1988.

12. In 1988, AMI acquired the Facility from GTE Sylvania and continued the electrical components manufacturing operations. In 1996, AMI changed its name to AMI Doduco.

13. On January 4, 2010, Metalor acquired the Facility from AMI Doduco. Metalor has owned the Facility continuously since its purchase. In July 2011, Metalor permanently ceased all manufacturing operations at the Facility.

14. Until July 2011, Metalor manufactured at the Facility electrical contacts, assemblies and materials that perform the functions of completing or breaking electrical circuits. The contacts are used in a variety of electrical equipment such as circuit breakers, motor starters, control devices, switches and relays.

### **Regulatory History**

15. The events described in paragraphs 16 through 19 and 20 through 37 occurred prior to Metalor's acquisition of the Facility.

16. On August 12, 1980, GTE Sylvania submitted a notification of Hazardous Waste Activity to EPA.

17. In the notification, GTE Sylvania indicated that the Facility was a hazardous waste generator since 1980. EPA assigned the Facility EPA identification number PRD090426180. GTE Sylvania's notification also indicated that it generated hazardous wastes having the following EPA waste codes: D001, D004, D006, D007, D008, D009, D010, D011, D018, D039, D040, F001, F002, F004, F005, F006, F007, F008, F009, F010, P030, P098, P104, P106, U154, and U228 from the following waste streams: wastewater treatment sludge, oxidizing salts from etching processes of sodium nitrites, spent fluorescent lamp bulbs, combustible liquid from degreasing operations in cleaning up tools, rags and filters containing cyanide silver cyanide and potassium cyanide generated from cleaning process of silver electroplating.

18. On November 19, 1980, a Permit Part A Application was submitted to EPA by GTE Sylvania.

19. On February 13, 1984, a Closure Plan and Declassification Petition were submitted to EPA. The revised Closure Plan was approved by EPA on August 7, 1985.

### **May 26, 1983 Release**

20. On May 26, 1983, a release of thirteen (13) gallons of sulfuric acid occurred at the Facility.

21. All spilled material was reportedly cleaned-up by GTE Sylvania using absorbent material.

22. No further action was proposed by GTE Sylvania.

### **October 23, 1983 Release**

---

23. On October 23, 1986, a release of two (2) to three (3) gallons of concentrated cyanide solution (containing silver cyanide and potassium cyanide) from a wastewater effects tank occurred at the Facility. A GTE Sylvania employee hosed the metal base of the tank, spreading the spill over the surrounding area.
24. On October 24, 1986, the leak was controlled by GTE Sylvania.
25. From October 23 through September 1988, various remedial activities were conducted by GTE Sylvania to clean up the spill area. Contaminated soil was excavated to a depth of fourteen -- (14) inches, removing approximately one hundred (100) cubic feet of soil material.
26. A total of fifteen (15) drums of contaminated water, soil, gravel, grass and other materials were disposed off-site at an EPA-approved land disposal facility and incinerator.
27. The analytical results for total cyanide after cleanup were consistently below ten (10) parts per million ("ppm").
28. In a letter dated September 26, 1988, GTE Sylvania informed the Puerto Rico Environmental Quality Board ("EQB") that the area affected had been totally covered and sealed with concrete.

### **April 18, 2003 Release**

29. On April 18, 2003, AMI Doduco detected a malfunction on a pump level switch that resulted in a diesel fuel spill of approximately 750 gallons.
30. As indicated in the Soil Samples Data Report, dated September 2003 (the "September 2003 Report") submitted to EPA by AMI Doduco, a total of fifteen (15) grab soil samples, three (3) field duplicate samples and one (1) background sample, for a total of nineteen (19) grab soil samples, were collected and analyzed by AMI Doduco.
31. Soil samples were collected in the following areas:
  - a. Area I: land area located right next to the Facility's main building and diesel tank area;
  - b. Area II: land area located in front of the emergency generator plant. Two grab soil samples and one field duplicate were collected;
  - c. Area III: land area located inside the adjacent property, next to the fence that separates it from the Facility; and a

- d. Background Sample: one background sample was collected in an area not affected by the diesel spill.

32. Samples were analyzed for Total Petroleum Hydrocarbon Gasoline Range Organic ("TPH GRO") and Total Petroleum Hydrocarbon Diesel Range Organic ("TPH DRO").

33. Laboratory analysis from the samples collected in September 18, 2003, detected TPH DRO in the soil sample from Area I at a concentration of 18.86 mg/kg.

34. There was no concentration of TPH GRO or TPH DRO in Area II and Area III.

35. Based on the laboratory results, the September 2003 Report recommended that no further action be taken at the Facility or adjacent property in the areas affected by the diesel spill.

#### **July 27, 2004 Release**

36. On July 27, 2004, a release of approximately ninety (90) gallons of nickel-plating solution overflowed the secondary containment onto the floor, running outside the building and flowing down a slope that drains into a storm drain and a culvert on a neighboring property.

37. Cleanup activities were undertaken by AMI Doduco. Following cleanup activities, soil and water samples were taken to assess the potential contamination of the area. The analytical results contained in AMI Doduco's final report dated November 9, 2004 ("November 2004 Report") concluded that soil and water were not impacted with nickel and that no further action was required.

#### **Phase I & Phase II Soil and Groundwater Investigations**

38. In November 2009, an Environmental Site Assessment ("ESA") Phase I, conducted on Metalor's behalf, identified five (5) Areas of Potential Concern ("APC") with respect to historical and current Facility operations:

- a. APC1- wastewater pre-treatment area;
- b. APC2- past cyanide spill impacted area;
- c. APC3- past diesel spill impacted areas;
- d. APC4- ammonia storage tanks & past nickel spill area; and
- e. APC5- former diesel UST and underground injection control ("UIC") system area.

39. The following main raw materials used at the Facility were identified: metals, such as silver, tungsten, copper, and nickel, dissociated ammonium, potassium cyanide, isopropyl alcohol, trichloroethylene (chlorinated hydrocarbon), sulfates, and diesel oil.

40. On February 9, 2010, Metalor performed a Phase II Investigation of the Facility to identify potential liabilities and to quantify potential exposures. Soil samples were taken between February 9 and 11, 2010. Groundwater samples were taken on February 25, 2010.
41. The ESA used the USEPA Regional Screening Level ("RSL") Master Table, dated December 2009, as the reference values for soil and groundwater parameter concentration levels; and the EQB Water Quality Standard Regulation, dated March 2003, for groundwater parameter concentration reference values.
42. Soil analytical results showed TPH DRO, trichloroethylene ("TCE") and cyanide concentrations below the laboratory quantification limit.
43. Metals concentrations were found to be below the relevant reference criteria and/or the laboratory quantification limits, with the exception of copper. These values were below the reference values for industrial land use, but some values exceeded the maximum contaminant level ("MCL") for groundwater protection.
44. The groundwater analytical results showed TCE concentrations above reference levels. Tetrachloroethylene ("PCE") was detected at concentrations above or at the applicable reference standards.
45. Concentrations of cadmium, iron, and chromium above the reference levels also were detected in groundwater.
46. On March 17, 2010, confirmatory sampling was performed on Metalor's behalf in order to verify the TCE and PCE concentrations in groundwater. The analytical results confirmed the TCE and PCE concentrations from the previous sampling results.
47. The ESA concluded that former onsite operations at the Facility may have contributed to the TCE and PCE contamination. It also concluded that the TCE and PCE concentrations in groundwater are the most critical issues at the Facility.

#### **IV. EFFECTS ON HUMAN HEALTH OR THE ENVIRONMENT**

48. The hazardous wastes and/or hazardous constituents that have been identified at the Facility may pose a threat to human health or the environment.
49. TCE should be handled as a carcinogen, with extreme caution. Exposure pathways are through inhalation, ingestion and dermal contact. Exposure can cause headache, dizziness, lightheadedness, and passing out. Very high exposure can cause irregular heart beat which can be



fatal. Repeated exposure may cause personality changes such as depression, anxiety, or irritability. TCE may damage the liver and kidneys. The MCL for TCE is 0.005 mg/L.

50. PCE is used mainly as a solvent for dry cleaning and metal degreasing. Exposure pathways are through inhalation, ingestion and dermal contact. Like most chlorinated solvents, PCE can cause central nervous system depression. Chronic exposure to PCE may adversely affect the neurological system, liver, and kidneys. PCE is reasonably anticipated to be a human carcinogen on the basis of limited evidence from studies in humans and sufficient evidence of carcinogenicity from studies in experimental animals.

51. PCE released to soil will readily evaporate or may leach slowly to the groundwater. Its break down by soil microbes is slow. PCE released to water will primarily evaporate and has little potential for accumulating in aquatic life. High air concentrations of PCE (particularly in closed, poorly ventilated areas) can cause dizziness, headache, sleepiness, confusion, nausea, difficulty in speaking and walking, unconsciousness, and death.

52. Chromium has the potential to cause health effects from a lifetime exposure at levels above the MCL, such as, skin irritation, damage to liver, kidney circulatory and nerve tissues. The most common health problem in workers exposed to chromium involves the respiratory tract. These health effects include irritation of the lining of the nose, runny nose, and breathing problems (asthma, cough, shortness of breath, wheezing). Workers have also developed allergies to chromium compounds, which can cause breathing difficulties and skin rashes.

53. Cadmium has the potential to cause health effects from long-term exposure. Low levels of cadmium in air, food, or water lead to a buildup of cadmium in the kidneys and possible kidney disease. Other long-term effects are lung damage and fragile bones. The MCL for Cadmium is 0.005 mg/L.

## **V. DETERMINATIONS AND CONCLUSIONS OF LAW**

Based on the foregoing findings of fact, EPA has made the following conclusions of law and determinations:

54. Respondent's Facility is a "facility" or "site" within the meaning of Section 3013(a) of RCRA, 42 U.S.C. § 6934(a).

55. Respondent is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

56. Respondent is an "owner" and/or "operator" of the Facility within the meaning of Section 3013(a) of RCRA, 42 U.S.C. § 6934(a).

57. Section 1004(27) of RCRA, 42 U.S.C. § 6903(27), defines the term "solid waste" as "any garbage, refuse ... and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations..."
58. Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), defines the term "hazardous waste" as a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may:
- a. cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or
  - b. pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.
59. Pursuant to 40 C.F.R. § 261.20(a), a solid waste as defined in 40 C.F.R. § 261.2, which is not excluded from regulation under § 261.4(b), is a hazardous waste if it exhibits any of the characteristics identified in 40 C.F.R. Part 261, Subpart C.
60. Pursuant to 40 C.F.R. § 261.30, a solid waste is a hazardous waste if it is listed in 40 C.F.R. Part 261, Subpart D, unless it has been excluded from this list under §§ 260.20 and 260.22.
61. Section 1004(3) of RCRA, 42 U.S.C. § 6903(3), defines the term "disposal" as "the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters."
62. Pursuant to 40 C.F.R. § 261.3(c) and (d), materials contaminated with a listed waste are hazardous waste by definition unless the material is delisted. In addition, pursuant to 40 C.F.R. § 261.33(d), soil and water materials contaminated with a U-listed waste identified in 40 C.F.R. § 261.33(f), are also identified as listed hazardous waste.
63. Based on the foregoing Findings of Fact, and pursuant to Section 3013(a) of RCRA, 42 U.S.C. § 6934(a), EPA has hereby determined that the Facility, owned and operated by Respondent, is a facility at which hazardous waste constituents may be present as a result of previous owners' operations and releases which occurred prior to Metalor's ownership of the Facility.
64. Based on the foregoing Findings of Fact, and pursuant to Section 3013(a) of RCRA, 42 U.S.C. § 6934(a), EPA has determined that there may be a substantial hazard to human health or the environment due to the presence and/or release of hazardous wastes and constituents at or from the Facility.
65. EPA has further determined that Metalor, as owner and/or operator of the Facility, is



responsible for conducting the actions ordered herein.

66. EPA has determined that the actions required by this Order are necessary to protect human health and/or the environment.

## **VI. ORDER**

67. Based on the Findings of Fact and Determinations and Conclusions of Law, Respondent is hereby ordered, pursuant to Section 3013(a) of RCRA, 42 U.S.C. § 6934(a), to submit written proposals and perform the work identified in Section VI.B of this Order (the "Work") in the manner and by the dates specified herein for carrying out monitoring, testing, analysis, and reporting to ascertain the nature and extent of the hazards posed by the hazardous wastes and/or hazardous constituents that are present at or that may have been released from Respondent's Facility. Respondent is hereby ordered to implement such proposals once approved, or modified and approved, by EPA. Such written proposals shall be specific and shall include, but are not limited to, performing the following:

### **A. CORRECTIVE ACTION GOALS**

1. Determine the extent and sources of all releases of hazardous wastes or hazardous waste constituents at the Facility using quality data;
2. Evaluate and meet EPA's Environmental Indicators,<sup>1</sup> to determine whether RCRA Interim Measures or Corrective Action are necessary or appropriate at the Facility;
3. Communicate regularly with EPA, the Commonwealth of Puerto Rico, and the community on the progress of actions taken pursuant to this Order. EPA agrees to provide an appropriate level of oversight to assist the Facility to meet these goals.

### **B. WORK TO BE PERFORMED**

Respondent shall demonstrate achievement of the goals listed in Section VI.A. by performing the Work described below. These goals may be achieved through a combination of sampling activities, previous work, and documentation of valid historical data.

1. Develop a Workplan
  - a. Within ninety (90) calendar days of the effective date of this Order, Respondent shall submit a site specific Workplan to EPA. The Workplan is subject to approval by EPA and shall include a strategy and schedule to implement pertinent tasks identified in this Order, which include, but are not limited to, the following:

---

<sup>1</sup> Further guidance on the environmental indicators is available in EPA's factsheet "RCRA Cleanup Reforms," EPA530-F-99-018, July 1999, <http://www.epa.gov/osw/hazard/correctiveaction/pdfs/reforms1.pdf>, and in the July 29, 1994, memorandum "RCRA Corrective Action Environmental Indicator Event Codes CA725 and CA750." EPA has developed additional guidance on environmental indicators, which is available at <http://www.epa.gov/epaoswer/hazwaste/ca/eis.htm>.

- i. site characterization (Section B.2.a.);
    - ii. quality Assurance Project Plan (Section B.2.b.);
    - iii. evaluation of Environmental Indicator goals (Section B.3); and
    - iv. reports to EPA (Section B.6).
  - b. Subject to EPA approval, Respondent may also add other tasks to the Workplan.
2. Respondent shall determine the extent and sources of releases of hazardous wastes or hazardous constituents at or from the Facility using quality data.
- a. Site Characterization - Respondent shall develop a site specific Workplan that determines the nature and extent of all releases of hazardous wastes and hazardous constituents at or from the Facility. The characterization will include investigative tasks such as sampling, analyses, data validation and data reporting. At a minimum, the Respondent shall perform the following:
    - i. soil - Identify maximum concentrations and determine the extent of any releases of hazardous constituents to soil related to the hazardous wastes managed at the Facility. Sampling shall continue until concentrations in soil reach EPA's Risk-Based Concentration ("RBC") Table, which is available at <http://www.epa.gov/reg3hwmd/risk/human/rb-concentration-table/>, using an appropriate land use scenario approved by EPA. In addition, evaluate the potential of these hazardous waste constituents in soil to affect other media through cross media transfer (e.g., screening against Soil Screening Levels ("SSLs") for groundwater). Areas to sample must include the hazardous waste generation and accumulation areas;
    - ii. groundwater - Determine maximum concentrations of hazardous waste constituents in groundwater related to the hazardous waste managed at the Facility; and, to the extent practicable, the source of the groundwater contamination. The horizontal and vertical extent of any releases to groundwater shall be delineated until concentrations of the hazardous waste constituents in groundwater reach MCLs, or, where no MCLs have been promulgated, EPA's RBC Table using the tap water column, independent of whether the aquifer is currently utilized as a source of potable water;
    - iii. surface Water and Sediment - Where contaminated groundwater potentially discharges to a surface water body, determine the maximum concentrations of hazardous wastes or hazardous waste constituents related to the hazardous waste managed at the Facility in surface water and sediment, and assess the extent of impact of such hazardous wastes or hazardous waste constituents on the surface water body, considering the state-designated use of the surface water body and the potential exposure to human and/or ecological receptors, as established by the Puerto Rico Water Quality Standards Regulations; and

- iv. air - Where there is the potential for indoor or outdoor air to be contaminated by particulates or vapors through cross-media transfer, determine the maximum concentrations through appropriate methods (e.g., sampling, modeling).
  - b. Data Quality - Respondent agrees to perform site screening and site characterization through the use of high quality field data collection protocols and appropriate EPA laboratory methods such that the analytical results accurately represent site characteristics. Respondent shall prepare a Quality Assurance Project Plan based on the "Uniform Federal Policy for Quality Assurance and Project Plans," which is available at:  
[http://www.epa.gov/fedfac/pdf/ufp\\_qapp\\_v1\\_0305.pdf](http://www.epa.gov/fedfac/pdf/ufp_qapp_v1_0305.pdf). The data collected shall support decisions regarding the need for Interim Measures and Corrective Action. In addition, Respondent shall ensure that:
    - i. all laboratories used by Respondent for analyses perform such analyses according to the EPA methods included in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846, Third Edition, as amended) or other methods deemed satisfactory to EPA;
    - ii. all laboratories used by Respondent for analyses participate in a quality assurance/quality control program equivalent to that which is followed by EPA; and
    - iii. data is reliable by having it undergo third party data validation.
  - c. Exposure Assessment - Respondent agrees to identify all potential exposure pathways.
- 3. Evaluate and meet EPA's Environmental Indicators.
  - a. Respondent agrees to assess current exposures and evaluate potential contaminated groundwater migration pathways as priority activities of the site investigation.
- 4. If EPA concludes after completion of the site characterization activities that Interim Measures are necessary, Respondent shall perform such Interim Measures at the Facility to prevent or mitigate threats to human health and/or the environment.
  - a. The Respondent agrees to implement Interim Measures:
    - i. when it is necessary to protect human health and/or the environment; and
    - ii. to meet the Environmental Indicator goals of eliminating current human exposure to and controlling groundwater contamination from releases of hazardous wastes or hazardous constituents to the extent practicable.
- 5. Interim Measures implemented shall be consistent with the long term cleanup objectives at the Facility.
  - a. Respondent shall conduct appropriate monitoring and/or confirmatory sampling of Interim Measures to assess their effectiveness. The quantity, quality, and

frequency of the monitoring will be dependent upon the Interim Measures  
selected.

6. Respondent shall communicate regularly with EPA, the Commonwealth of Puerto Rico, and the community on actions taken by Respondent pursuant to this Order.

a. Respondent agrees to submit:

- i. within thirty (30) calendar days of the effective date of this Order, Respondent agrees to submit for EPA's review and approval an Environmental Indicators report;
- ii. within ninety (90) calendar days of receipt of EPA's comments on the Environmental Indicators report submitted in accordance with Section B.6.a.i (above), Respondent agrees to submit for EPA's review and approval a Site Investigation report;
- iii. annual Progress Reports to EPA and the Commonwealth of Puerto Rico, summarizing the work performed (including new interim measures), public involvement activities, proposed schedule changes, and a summary of anticipated activities to be conducted over the next year. The first Annual Progress Report shall be submitted to EPA and the Commonwealth one year from the effective date of this Order and each subsequent annual report shall be submitted by the anniversary date of said effective date; and
- iv. in addition to the written reports identified above, the Respondent may choose to present information to EPA in the form of oral presentations and request EPA comment on technical issues or proposed actions.

### C. FINAL REMEDIES - COMPLETING CORRECTIVE ACTION

1. Eliminating human exposure to hazardous wastes and hazardous constituents and controlling migration of contaminated groundwater are short-term corrective action objectives. Interim Measure activities implemented to achieve these short-term objectives are based on reasonably expected human exposures under current land and groundwater use conditions. The RCRA Corrective Action Program's overall mission is to protect human health and the environment. To achieve this goal, final remedies must be based on potential future land and groundwater uses and ecological receptors.
2. At the completion of site characterization activities, EPA will evaluate the need for Interim Measures or a Corrective Action Permit or Order.
3. Under certain circumstances, implementation of Interim Measures may achieve the final remedial goals. In that case, EPA will issue a public notice with the tentative determination and solicit comment prior to making a final Agency determination regarding final corrective action remedies at the Facility.

#### **D. CERTIFICATION**

1. The reports specified in subsections B.6.a.i., ii. and iii. above, when submitted to EPA and the Commonwealth of Puerto Rico, shall be certified by a "responsible corporate officer"<sup>2</sup> of Respondent. Respondent agrees to provide the certification in the following form:

I certify that the information contained in this Report is true, accurate, and complete.

As to [the/those identified portion(s)] of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify that this Report and all attachments were prepared in accordance with procedures designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, or the immediate supervisor of such person(s), the information submitted is, to the best of my knowledge and belief, true, accurate, and complete.

Name:

Title:

Signature:

#### **E. SAMPLING AND DATA/DOCUMENT AVAILABILITY AND PRESERVATION**

1. Respondent shall submit to EPA the results of all sampling and/or tests or other data generated by or on its behalf relating to the Facility or to the migration of contaminants therefrom.
2. At the request of EPA, Respondent shall provide or allow EPA or its authorized representatives to take split or duplicate samples of all samples collected by Respondent pursuant to this Order. Respondent agrees not to limit access to the property or otherwise affect EPA's authority to collect samples pursuant to applicable law, including, but not

---

2 A "responsible corporate officer" means: (a) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (b) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. A person is a "duly authorized representative" only if: (1) the authorization is made in writing by a person described above; and (2) the authorization specifies either an individual or position having responsibility for overall operation of the regulated facility or activity (a duly authorized representative may thus be either a named individual or any individual occupying a named position).

limited to, RCRA, the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §9601, *et seq.*, and any other statutes.

3. Commencing on the effective date of this Order, Respondent agrees that it shall preserve and make available to EPA for inspection and copying, all data, records and documents in its possession or in the possession of its divisions, officers, directors, employees, agents, contractors, successors, and assigns which relate in any way to this Order or to hazardous waste management and/or disposal at the Facility.

## **VII. OTHER APPLICABLE LAWS**

68. All actions under this Order shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations. Respondent shall obtain or require its authorized representatives to obtain all permits and approvals necessary under such laws and regulations.

## **VIII. NOTICE OF NON-LIABILITY OF EPA**

69. EPA shall not be deemed a party to any contract involving the Facility and relating to activities at the Facility and shall not be liable for any claim or cause of action arising from or on account of any act or omission of Respondent, its officers, employees, contractors, receivers, trustees, agents or assigns, in carrying out the activities required by this Order.

70. Upon approval of the Workplan by EPA, Respondent shall commence implementation of the Workplan within fifteen (15) calendar days.

71. All work undertaken pursuant to this Order shall be developed and performed in a manner consistent with RCRA and its implementing regulations and all relevant EPA guidance documents.

72. Each Workplan described above shall be designed to define the nature, location, extent, direction and rate of movement of any hazardous wastes and/or hazardous constituents which are present at or have been released from the Facility. Each Workplan shall document the procedures Respondent shall use to conduct the investigations necessary to: 1) characterize the potential pathways of migration of hazardous waste and/or hazardous constituents; 2) characterize the sources of hazardous waste and/or hazardous constituent contamination; 3) define the degree and extent of hazardous waste and/or hazardous constituent contamination; and 4) identify actual or potential receptors.

73. EPA acknowledges that Respondent may have completed some of the tasks required by this Order and/or that Respondent may have available some of the information and data required by this Order. This previous work may be used to meet the requirements of this Order, upon submission to and formal approval by EPA.

74. Unless otherwise specified, Respondent's workplans and all reports and other documents that are required to be submitted under this Order shall be in writing and shall be hand delivered,



sent by certified mail, return receipt requested, or by overnight express mail to the following EPA and EQB representatives:

Puerto Rico Environmental Quality Board  
Land Pollution Control Area  
Hazardous Waste Permits Division  
Apartado 11488  
San Juan, Puerto Rico 00910

and

U.S. Environmental Protection Agency  
City View Plaza II, Suite 7000  
#48 PR 165 Km. 1.2  
Guaynabo, P.R. 00968-8069

Attention: Khrystian Vázquez

Submittals may be made electronically on the due date; provided that hard copies shall be mailed the same date.

75. Any variance from the approved terms and schedules in the approved workplan or any monitoring, testing, analysis or reporting conducted by Respondent without an approved workplan may be determined to be unsatisfactory by EPA, and subject Respondent to stipulated penalties under Section XVIII. below.

#### **IX. ADDITIONAL WORK**

76. EPA may determine that additional monitoring, testing, analysis, and/or reporting is necessary to ascertain the nature and extent of any hazard to human health or the environment which may be presented by the presence of hazardous wastes at and/or released from the Facility. If EPA determines that such additional work is necessary, EPA will notify Respondent in writing and specify the basis for its determination that additional work is necessary. Within fifteen (15) calendar days after the receipt of such determination, Respondent shall have the opportunity to meet or confer with EPA to discuss the additional work. If required by EPA, Respondent shall submit for EPA approval a workplan for the additional work. EPA will specify the contents of such workplan. Such workplan shall be submitted by Respondent within thirty (30) calendar days of receipt of EPA's determination that additional work is necessary, or according to an alternative schedule established by EPA.

#### **X. MINIMUM QUALIFICATIONS FOR PERSONNEL**

77. All work performed by Respondent pursuant to this Order shall be under the direction and supervision of an individual who has demonstrated expertise in hazardous waste site investigation. Before any work is performed, Respondent shall submit to EPA, in writing, the name, title, and qualifications of the supervisory personnel and of any contractors or

subcontractors to be used in carrying out the terms of this Order. Additionally, Respondent shall ensure that when a license is required, only licensed individuals shall be used to perform any work required by this Order.

## **XI. SUBMISSIONS/EPA REVIEW**

78. EPA will review all written proposals, workplans, draft and final reports, and any other documents required to be submitted under this Order ("submissions"). EPA may: (a) approve the submission; (b) approve the submission with modifications; (c) disapprove the submission and direct Respondent to re-submit the document after incorporating EPA's comments; or (d) disapprove the submission and assume responsibility for performing all or any part of the work. EPA may also approve, modify, or disapprove a portion of a submission. As used in this Order, the terms "approval by EPA," "EPA approval," or a similar term means the action described in (a) or (b) of this paragraph.

79. Prior to EPA's written approval, with or without modifications, no written proposal, workplan, report, or other submission shall be construed as approved and final. Oral advice, suggestions, or comments given by EPA representatives will not constitute approval, nor shall any oral approval or oral assurance of approval be considered as binding.

80. Upon receipt of a notice of disapproval pursuant to the first paragraph in this section, or a request for a modification, Respondent shall, within fifteen (15) calendar days, or such longer time as specified by EPA in its notice of disapproval or request for modification, correct the deficiencies, and revise and submit the given document in accordance with EPA's written comments. Notwithstanding the notice of disapproval, or approval with modifications, Respondent shall proceed, at the direction of EPA, to take any action required by any approved portion of the submission. Revised submittals are also subject to EPA approval, approval with conditions and/or modifications, or disapproval. Any revised submittal that is not approved or is not approved with conditions and/or modifications is considered noncompliant with the terms of this Order.

81. Within fifteen (15) calendar days following EPA approval of a submission or portion thereof, Respondent shall implement such approved document or portion.

82. All written proposals, workplans, reports, and/or other submissions required by this Order are, upon approval by EPA (including modification and approval), incorporated into this Order. Any noncompliance with such EPA-approved written proposals, workplans, reports, specifications, schedules, and other submissions shall constitute noncompliance with this Order. Oral advice or approvals given by EPA representatives shall not relieve Respondent of its obligation to obtain formal, written approvals required by this Order.

## **XII. QUALITY ASSURANCE/QUALITY CONTROL**

83. All sampling undertaken pursuant to this Order shall be performed in accordance with the EPA-approved terms and schedules, and in a manner consistent with the "Uniform Federal Policy for Quality Assurance and Project Plans," which is available at:



84. Respondent shall follow EPA guidance for sampling and analysis. Respondent shall develop a Quality Assurance Project Plan ("QAPP") for all sampling and analysis conducted under this Order. Workplans shall contain quality assurance/quality control ("QA/QC") and chain of custody procedures for all sampling, monitoring, and analytical activities. Any deviations from the QA/QC and chain of custody procedures in approved workplans must be approved by EPA prior to implementation; must be documented, including reasons for the deviations; and must be reported in the applicable report.
85. The name(s), addresses, and telephone numbers of the analytical laboratories Respondent proposes to use must be specified in the applicable workplan(s).
86. All workplans required under this Order shall include data quality objectives for each data collection activity to ensure that data of known and appropriate quality are obtained and that data are sufficient to support their intended use(s).
87. Respondent shall monitor to ensure that high quality data is obtained by its consultant or contract laboratories. Respondent shall ensure that laboratories used by Respondent for analysis perform such analysis according to the latest approved edition of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846 Third Edition as amended by Update One, July 1992), or other methods deemed satisfactory to EPA. If methods other than EPA methods are to be used, Respondent shall specify and submit all such protocols for EPA approval in the workplan. EPA may reject any data that does not meet the requirements of the approved workplan or EPA analytical methods and may require re-sampling and additional analysis.
88. Respondent shall ensure that the laboratories it uses for analyses participate in a QA/QC program equivalent to that which is followed by EPA. EPA may conduct a performance and QA/QC audit of each laboratory chosen by Respondent before, during, or after sample analyses. Upon request by EPA, Respondent shall have its laboratory perform analyses of samples provided by EPA to demonstrate laboratory performance. If the audit reveals deficiencies in a laboratory's performance or QA/QC, re-sampling and additional analysis may be required.

### **XIII. PROJECT COORDINATOR**

89. EPA hereby designates as its Project Coordinator:

Khrystian Vázquez  
U.S. Environmental Protection Agency  
City View Plaza II, Suite 7000  
#48 PR 165 Km. 1.2  
Guaynabo, P.R. 00968-8069  
E-mail: vazquez.khrystian@epa.gov  
Phone: 787-977-5860

90. Within ten (10) calendar days of Respondent's receipt of this Order, Respondent shall

designate a Project Coordinator and submit the designated Project Coordinator's name, address, \_\_\_\_\_ and telephone number in writing to EPA.

91. Each Project Coordinator shall, on behalf of the party that designated him/her, oversee the implementation of this Order and function as the principal project contact.

92. Respondent shall provide EPA with a written notice of any change in its Project Coordinator. Such notice shall be provided at least seven (7) calendar days prior to the change in Project Coordinator.

#### **XIV. IMMINENT AND SUBSTANTIAL ENDANGERMENT**

93. Notwithstanding any other provision of this Order, an enforcement action may be brought against Respondent, pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, and/or any other applicable statutory or regulatory authority, should EPA find that the handling, storage, treatment, transportation or disposal of solid waste or hazardous waste at Respondent's Facility may present an imminent and substantial endangerment to human health or the environment.

#### **XV. ON-SITE AND OFF-SITE ACCESS**

94. Respondent shall provide access at all reasonable times to the Facility and to all records and documentation relating to conditions at the Facility and the activities conducted pursuant to this Order to EPA and its employees, contractors, agents, consultants, and representatives. These individuals shall be permitted to move freely at the Facility in order to conduct activities which EPA determines necessary.

95. To the extent that activities required by this Order, or by any approved workplans prepared pursuant hereto, must be done on property not owned or controlled by Respondent, Respondent will use its best efforts to obtain site access agreements in a timely manner from the present owners of such property. Best efforts, as used in this paragraph, shall include the payment of reasonable compensation in consideration of granting access. Respondent shall ensure that EPA's Project Coordinator has a copy of any access agreements.

96. Nothing in this Order limits or otherwise affects EPA's right of access and entry pursuant to applicable law, including, but not limited to, RCRA and CERCLA.

#### **XVI. RECORD PRESERVATION**

97. Respondent shall retain, during the pendency of this Order and for a minimum of five (5) years after its termination, a copy of all data, records, and documents now in its possession or control, or in the possession or control of its contractors, subcontractors, representatives, or which come into the possession or control of the Respondent, its contractors, subcontractors, or representatives, which relate in any way to this Order. Respondent shall notify EPA, in writing, at least ninety (90) calendar days in advance of the destruction of any such records, and shall provide EPA with the opportunity to take possession of any such records. Such written notification shall reference the caption, docket number and date of issuance of this Order and

shall be addressed to EPA's Project Coordinator, to the above referenced address. Additionally, Respondent shall provide data, records and documents retained under this Section at any time before the expiration of the five (5) year period at the written request of EPA.

#### **XVII. INFORMATION SUBMITTED TO EPA**

98. Any information that Respondent is required to provide or maintain pursuant to this Order is not subject to the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 et seq.

99. Respondent may assert a business confidentiality claim in the manner described in 40 C.F.R. § 2.203(b) covering all or part of any information submitted to EPA pursuant to this Order. In accordance with 40 C.F.R. § 2.204(e)(4), any assertion of confidentiality shall be adequately substantiated by Respondent when the assertion is made. Information submitted for which Respondent has asserted a claim of confidentiality as specified above shall be disclosed by EPA only to the extent and manner permitted by 40 C.F.R. Part 2, Subpart B. If no such confidentiality claim accompanies the information when it is submitted to EPA, the information may be made available to the public by EPA without further notice to the Respondent. Respondent agrees not to assert any confidentiality claim with respect to any physical, sampling, monitoring, or analytical data.

#### **XVIII. STIPULATED PENALTIES**

100. Unless Respondent is excused under the "Force Majeure and Excusable Delay" provision of this Order, Respondent shall pay a stipulated penalty for failure to comply with any requirement, term, or condition set forth in or required by this Order. The stipulated penalty for each non-complying act is as follows:

Period of Failure to Comply	Penalty for Non-compliance per Calendar Day
1st through 60 <sup>th</sup> day	\$700.00
61 <sup>st</sup> through 120 <sup>th</sup> day	\$1,400.00
121 <sup>st</sup> through 180 <sup>th</sup> day	\$2,100.00
181 <sup>st</sup> day and thereafter	\$2,800.00

Stipulated penalties shall be paid by cashier's or certified check, payable to the Treasurer, United States of America, and mailed to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Said payment(s) shall be identified as **Metalor Electrotechnics Puerto Rico LLC**, and must

reference the **Docket Number** set forth on the title page of this Order.

101. All stipulated penalties begin to accrue on the day each act of noncompliance with any requirement, term, or condition set forth in or required by this Order first takes place. Said stipulated penalties shall continue to accrue through, and including, the day on which any failure to comply with such requirement, term, or condition is remedied. Nothing herein shall preclude, or is intended to preclude, the simultaneous accrual of separate stipulated penalties for each separate act of noncompliance with this Order. Penalties shall accrue regardless of whether EPA has notified Respondent of the act or acts of non-compliance, but need only be paid upon demand.
102. After receipt of a demand from EPA for stipulated penalties pursuant to this Section of the Order, Respondent may within thirty (30) calendar days of such demand, provide EPA with a written explanation of why it believes the stipulated penalties are not appropriate for the act(s) of non-compliance cited by EPA. If Respondent elects not to file such explanation, the stipulated penalties shall be paid within ninety (90) calendar days after receipt of the penalty demand.
103. The Director of the Caribbean Environmental Protection Division may, in his or her sole discretion, reduce or eliminate such stipulated penalties based on Respondent's written explanation as specified immediately above. If Respondent makes a submittal as specified above, and the Division Director does not eliminate the stipulated penalties, then EPA will again notify Respondent in writing that the original or reduced stipulated penalties must be paid by Respondent. Respondent shall pay the stipulated penalties as set forth in EPA's notice pursuant to this sub-section within ninety (90) calendar days of its receipt of the notice.
104. At any time prior to Respondent's payment of stipulated penalties, the Director of the Caribbean Environmental Protection Division may, for good cause as independently determined by him or her, reduce or eliminate the stipulated penalties. If the Director makes such determination, EPA will notify Respondent in writing of the change.
105. Except as provided above, all penalties owed to EPA under this Section shall be due and owing within ninety (90) calendar days after receipt of EPA's written notice to Respondent described above. Interest shall also accrue on any amount not paid when due at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717.
106. If Respondent fails to pay stipulated penalties as required under this Order, EPA may refer this matter to the U. S. Department of the Treasury or the Department of Justice for collection under applicable law. Nothing in this section, however, limits, or shall be construed as limiting, any rights or remedies available to EPA to enforce this Order and to seek compliance with the terms and conditions of this Order or any other applicable law or regulation.

## **XIX. FORCE MAJEURE AND EXCUSABLE DELAY**

107. Respondent shall perform all the requirements of this Order within the time limits set forth, approved, or established herein, unless the performance is prevented or delayed solely by events which constitute a force majeure. A force majeure is defined as any event arising from causes not reasonably foreseeable and beyond the control of the Respondent which could not be overcome by due diligence and which delays or prevents performance by a date required by this Order. Such events do not include unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, Commonwealth, or local permits. Nothing in this Section XIX bars Respondent from seeking a scheduling modification pursuant to Section XXIII MODIFICATION, herein.

108. The Respondent shall notify in writing the EPA Project Coordinator within ten (10) days after becoming aware of any event which it knows or should know constitutes a force majeure. Such notice shall detail the estimated length of delay, including necessary demobilization and remobilization, its causes, measures taken or to be taken to minimize the delay, and an estimated timetable for implementation of these measures. Respondent shall adopt all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this section shall constitute a waiver of Respondent's right to assert a force majeure and may be grounds for EPA to deny Respondent an extension of time for performance.

109. After receiving notice from Respondent that it is invoking the force majeure provisions of this Order, EPA will respond in writing indicating either EPA's agreement that the event constitutes a force majeure or its disagreement and the reasons therefore.

110. If EPA agrees that a force majeure has occurred, the time for performance may be extended, upon EPA approval, for a period equal to the delay resulting from such circumstances. This shall be accomplished through written amendment to this Order, or modifying the schedule in a previously approved plan. Such an extension or modification will not alter the schedule for performance or completion of any other tasks required by this Order unless EPA determines that the delayed task is a prerequisite or necessary requirement for other specified tasks and the schedule is specifically altered in accordance with XXIII. MODIFICATION, herein.

## **XX. RESERVATION OF RIGHTS**

111. EPA expressly reserves all rights and defenses that it may have, including the right both to disapprove of work performed by Respondent pursuant to this Order, and to order that Respondent perform additional work, and/or to conduct the work itself.

112. EPA expressly reserves all of its statutory and regulatory powers, authorities, rights, remedies, both legal and equitable, including any which may pertain to Respondent's failure to comply with any of the requirements of this Order, including, without limitation, the right to commence a civil action against Respondent seeking an order requiring compliance with this Order and/or the assessment of penalties under Section 3013(e) of RCRA, 42 U.S.C. § 6934(e),



and all rights EPA has pursuant to RCRA § 3013(d), 42 U.S.C. § 6934(d), to conduct \_\_\_\_\_ monitoring, testing, analysis at the Facility and to seek reimbursement from Respondent for the costs of such activity. This Order shall not be construed as a covenant not to sue, or as a release, waiver or limitation of any rights, remedies, defenses, powers and/or authorities, civil or criminal, which EPA has under RCRA, CERCLA, the Clean Water Act, the Safe Drinking Water Act, the Clean Air Act, or any other statutory, regulatory, or common law enforcement authority of the United States.

## **XXI. OTHER APPLICABLE LAWS**

113. All actions required to be taken by Respondent pursuant to this Order shall be undertaken in accordance with the requirements of all applicable federal, state, and local laws, regulations, permits, and ordinance.

114. Compliance by Respondent with the terms of this Order shall not relieve Respondent of its obligations to comply with RCRA, or any other applicable federal, state, or local laws, regulations, permits, and ordinances.

115. This Order is not and shall not be interpreted to be a permit, or as a ruling or a determination of any issue related to a permit under federal, state or local law. This Order shall not in any way affect Respondent's obligation, if any, to secure such a permit, nor shall this Order be interpreted in any way to affect or waive any of the conditions or requirements that may be imposed by such permit, nor of Respondent's right to appeal any conditions of such permit.

## **XXII. OTHER CLAIMS**

116. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action, demand, or defense in law or equity, against any person, firm, partnership, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any solid wastes, hazardous wastes, hazardous constituents, hazardous substances, pollutants, or contaminants found at, taken to, or migrating from the Facility.

117. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts of omissions of Respondent or its agents, contractors, subcontractors or other representatives.

## **XXIII. MODIFICATION**

118. This Order may only be modified by written amendment signed by authorized officials of EPA and Respondent. Modifications in any schedule adopted pursuant to this Order may be made in writing by EPA's Project Coordinator.

119. No informal advice, guidance, suggestions, or comments by EPA shall be construed to modify the requirements of this Order. Routine communications exchanged verbally, in person, by telephone or by electronic mail between the parties to facilitate the orderly conduct of work

contemplated by this Order shall not alter or waive any rights and/or obligations of the parties under this Order.

#### **XXIV. SEVERABILITY**

120. If any provision or authority of this Order, or the application of this Order to any party or circumstances, is held by any judicial or administrative authority to be invalid, the application of such provisions to other Parties or circumstances and the remainder of the Order shall not be affected thereby and shall remain in full force.

#### **XXV. TERMINATION AND SATISFACTION**

121. Respondent may seek termination of this Order by submitting to EPA a written document which indicates Respondent's compliance with all requirements of this Order, and the associated dates of approval correspondence from EPA. The provisions of this Order shall be deemed satisfied upon Respondent's and EPA's execution of an *Acknowledgment of Termination and Agreement for Record Preservation and Reservation of Rights* ("Acknowledgment"). The Acknowledgment shall specify that Respondent has demonstrated to the satisfaction of EPA that the terms of this Order, including any additional work determined by EPA to be required pursuant to this Order, have been satisfactorily completed. The Acknowledgment shall not, however, terminate Respondent's obligations to comply with any continuing obligations hereunder, including, but not limited to, Section XIV., Record Preservation; Section XVII., Reservation of Rights; Section XXI., Other Applicable Laws; and Section XXII., Other Claims.

#### **XXVI. SURVIVABILITY/PERMIT INTEGRATION**

122. Except as otherwise expressly provided in this section, this Order shall survive the issuance or denial of a RCRA permit for the Facility, and this Order shall continue in full force and effect after either the issuance or denial of such permit. Accordingly, Respondent shall continue to be liable for the performance of obligations under this Order notwithstanding the issuance or denial of such permit. If the Facility is issued a RCRA permit and that permit expressly incorporates all or a part of the requirements of this Order, Respondent may request a modification of this Order and shall, with EPA approval, be relieved of liability under this Order for those specific obligations.

#### **XXVII. OPPORTUNITY TO CONFER**

123. In accordance with Section 3013(c) of RCRA, 42 U.S.C. § 6934(c), Respondent or its representative may confer in person or by telephone with EPA regarding the Workplan described in Section VI.B.1. above. The opportunity to confer with EPA may be pursued by the Respondent no later than thirty (30) calendar days after the issuance of this Order.

124. The scheduling of a conference with EPA does not relieve Respondent of the obligation to submit the Workplan or other documents under this Order, within the time period specified in this Order, or to implement the proposals once approved by EPA.

125. Any request for a conference with EPA, and other questions regarding this Order should

be directed to:

Carolina Jordán-García  
Assistant Regional Counsel  
Office of Regional Counsel-Caribbean Team  
U.S. Environmental Protection Agency, Region 2  
City View Plaza II-Suite 7000  
#48 Rd.165 Km.1.2  
Guaynabo, Puerto Rico 00968-8069  
Phone: 787-977-5834  
Email: jordan-garcia.carolina@epa.gov

126. Any technical questions regarding this Order shall be directed to Khrystian Vazquez, EPA Project Coordinator.

127. If Respondent fails to request a conference within the time periods specified in this Section, or fails to agree upon a date to schedule such conference within the time periods specified in this Section, Respondent shall be deemed to have waived the opportunity under Section 3013(c) of RCRA to confer with EPA regarding the Respondent's written proposal.

#### **XXVIII. MONITORING CARRIED OUT BY EPA**

128. If EPA determines that Respondent is not able to conduct the activities required by this Order in a satisfactory manner, or if actions carried out by Respondent are deemed unsatisfactory, then EPA or its representatives may conduct such monitoring, testing and analysis deemed reasonable by EPA to ascertain the nature and extent of the hazard at the property and/or Facility of Respondent, or authorize the Commonwealth of Puerto Rico or any other person to conduct such monitoring, testing, and analysis. Respondent may then be ordered to reimburse EPA or its representatives, or the Commonwealth of Puerto Rico or other person authorized by EPA, for the costs of such activity pursuant to Section 3013(d) of RCRA, 42 U.S.C. § 6934(d).

#### **XXIX. EFFECTIVE DATE**

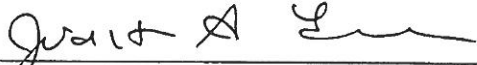
129. The Order shall be effective ten (10) calendar days after the date it is signed by the Regional Administrator of EPA.



Re: In the Matter of: Metalor Electrotechnics Puerto Rico LLC  
Docket Number CAA-02-2013-7305

**IT IS SO AGREED AND ORDERED.**

DATE: 11/5/13

By:   
Judith A. Enck  
Regional Administrator  
United States Environmental Protection Agency  
Region 2

Re: In the Matter of: Metalor Electrotechnics Puerto Rico LLC  
Docket Number CAA-02-2013-7305

DATE: 09/27/2013

By:   
Metalor Electrotechnics Puerto Rico LLC

Name: Laurence Drummond

DATE: 09/27/2013

By:   
Metalor Electrotechnics Puerto Rico LLC

Name: Antoine de Montmelling

Re: In the Matter of: Metalor Electrotechnics Puerto Rico LLC  
Docket Number CAA-02-2013-7305

**CERTIFICATE OF SERVICE**

This is to certify that I have this day caused to be sent the foregoing fully executed Administrative Order on Consent, bearing Docket Number CAA-02-2013-7305, in the following manner to the respective addressees below:

Copy by Certified Mail

Return Receipt Requested:

Metalor Electrotechnics Puerto Rico LLC  
c/o Corporation Trust Center  
1209 Orange Street  
Wilmington-New Castle, Delaware 19802

Signature: \_\_\_\_\_



Date: \_\_\_\_\_

11/12/13